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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 LARRY GIBBS, JR.,

11 Plaintiff(s),

12 vs.

13 DR. MARIA FEY, et al.,

14 Defendant(s).
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Case No. 2:15-cv-01958-GMN-NJK

ORDER

16 Pending before the Court is Plaintiff's motion for an order allowing service on the Nevada
17 Department of Corrections with respect to his claim against Defendant Ziemann. Docket No. 26. Plaintiff
18 argues that he has sued Defendant Ziemann in his official capacity and, as such, he has essentially sued the
19 Nevada Department of Corrections. *See id.* at 3.¹ The Court finds it in the interest of justice to receive a
20 response from the state on this issue. Accordingly, the Nevada Attorney General's Office may file a
21 response to the motion, no later than September 28, 2017, indicating (1) whether it will accept service with
22 respect to Plaintiff's official capacity claim against Defendant Ziemann and, if not, (2) why the Court
23 should deny Plaintiff's request to allow service on the Nevada Department of Corrections. To the extent
24 such response is not filed, the Court will assume the state does not object to service as requested.

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27 ¹ Plaintiff's complaint identifies the claim against Defendant Ziemann as both in his individual and
28 official capacities, and seeks both damages and prospective injunctive relief. *See* Docket No. 1-1 at 3, 14.
A civil rights plaintiff may not recover damages against a defendant in his official capacity, but may obtain
prospective injunctive relief. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 64-66, 71 n.10 (1989).

1 The Clerk's Office is **INSTRUCTED** to serve a copy of this order on Deputy Attorney General
2 Tiffany Breinig.

3 IT IS SO ORDERED.

4 Dated: September 14, 2017

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NANCY J. KOPPE
UNITED STATES MAGISTRATE JUDGE